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NO. 06 - 209

IN THE

Supreme Court of the United States

JOANNA HERNANDEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING

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PETITION FOR REHEARING

I.

Not with standing the Eleventh Circuit opinion in the present case, there is at least three district courts that have also interpreted *Muehler v. Mena 544 U.S. 93, 125 S. Ct. 1465, 161 L. Ed. 2d 299 (2005),* to apply to traffic stops. (See *Dabbs v. Crosby*, Not Reported in F. Supp. 2d, 2005 WL 2456220, (M.D. Fla.), *U.S. v. Smith*, Slip Copy, 2006 WL 2226313 (M.D. Fla.), and *U.S. v. Maddox*, Not Reported in F. Supp. 2d, 2005 WL 3307213 (M.D. Fla.). In *Meuhler* this Court held that no independent reasonable suspicion was required for officers to question persons about immigration status while being detained during a search for weapons and evidence of gang membership. The court in *Dabbs* ruled that "Although the seizure in *Muehler* was conducted pursuant to a search warrant, we believe that the focus on duration (and not scope of questioning) is just as applicable to a lawful traffic stop." (*Dabbs* p. 13) Hernandez would urge this Court to reconsider five issues that are very important

regarding case.

First, without this Court clarifying whether *Muehler* extends to warrantless traffic stops, where there is no apparent danger to the police officers, there will be many courts interpreting *Muehler* as applying to warrantless searches of motorist on public streets. *Muehler* clearly applies to the situation where the police has a legal search warrant and, more importantly , there is imminent danger of weapons being found. If *Muehler* extends to motorist on public roads the expectation of privacy which forms the cornerstones of the Fourth Amendment are compromised.

II.

Second, Petitioner's case is important to clarify how far a police officer can extend his inquiry of a legally stopped motorist. Petitioner would argue that police have been afforded great latitude in asking questions of a motorist that are unrelated to the traffic violation. This intrusion into the motorist private affairs not only violates the privacy

issues protected by the Fourth Amendment but has been used as a tool by police to extend a legitimate traffic stop into a drug related investigation.

This issue has not been addressed in such cases as *Muehler* and *Illinois v. Caballes*, 543 U.S. 405, 125 S. Ct. 834, 160 L. Ed. 2d 842 (2005).

III.

Third, the Petitioner would urge this Court to reconsider the issue of geographical profiling as an extension of racial profiling.

In this case the officer admitted that he used the fact that the motorist had Texas license plates as a factor in developing reasonable suspicion to detain the motorist. The officer also admitted that he noticed that the driver was Hispanic and had a Spanish sur-name. The officer called the U. S. Customs Department to run a records check to include border crossings since Texas borders Mexico. The officer even asked the driver

how long had it been since he was in Mexico, what part of Mexico and if he liked it.

This geographical profiling, as used by the officer in this case, was used as a veil to cover any admission by the officer of racial profiling. The officer testified that race was never a factor in developing reasonable suspicion. His actions and careful wording cannot hide the underlying fact that because the motorist was of Hispanic descent and from Texas, the officer clearly used race and geographics in prolonging the traffic stop, thus violating the Equal Protection Clause of the Fourteenth Amendment.

IV.

Fourth, Hernandez would argue that the District Court, in applying the totality of the circumstances test found in *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889(1968), was in a better position to judge whether the answers to the questions posed by the officer gave rise to reasonable suspicion to prolong the stop. In cases where the police are looking for any little discrepancy to build

a case, the trail court should be given the benefit of the doubt when it comes to reviewing the total circumstances surrounding the questions and plausible explanations by the motorists. See *United States v. Arvizu*, 534 U.S. 266, 122 S. Ct. 744, 151 L. Ed. 2d 740 (2002).

V.

Finally, the Eleventh Circuit in this case questions "whether the Fourth Amendment's prohibition of unreasonable seizures is concerned with such trifling amounts of time, when the seizure was caused at the outset by an apparent violation of the law." (*U.S. v. Hernandez*, Footnote7, p. 1212)

The Eleventh Circuit's opinion in this case seems to concern itself with duration of stop and not the intrusion into the private lives of citizens. If such thinking is the norm, then officers may be entitled to ask as many non-related questions as they may see fit within a "reasonable amount of time" until

one answer does not fit into his narrow minded, biased opinion. The simple answer given by the driver in this case of his girlfriend having diarrhea, which may be one of the most common excuse given to police to get out of a traffic ticket, allowed the police to interrogate further and turn a simple traffic stop for going 8 miles over the speed limit into a major drug investigation. The officers further reasons were, 1.) empty food containers, 2.) different thoughts on how long the trip would take, 3.) nervousness (which has been held as insufficient reason), 4.) travel at night, 5.) severe weather (in Houston only, the storm did not follow to Alabama), 6.) The Defendant forgot the name of the town, 7.) travel between Houston and Atlanta, and 8.) in the officers opinion, the luggage was "too small". If such opinion is allowed to stand, officers are given unlimited authority to conduct "fishing expeditions" which the Eleventh Circuit had previously ruled to be unconstitutional. (See, *U.S. v. Tapia*, 912 F. 2d 1367 (11th Cir. 1990).

For the above reasons, Joanna Hernandez would urge this Court to grant this

Petition for Rehearing and accept her Petition for Writ of Certiorari.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

Now Comes, Ruben Ramirez, Attorney for Petitioner and hereby certifies that the attached Petition For Rehearing is restricted to the grounds specified in paragraph 1 of Rule 44 of the Rules of the Supreme Court of the United States and/or is a matter of Petitioner's rights as established by the Constitution of the United States of America. The attached Petition For Rehearing is presented in good faith and not for delay.

Signed this _____ day of October, 2006.

_____

RUBEN RAMIREZ
ATTORNEY FOR PETITIONER